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# **The Intergovernmental Science-Policy Platform for Biodiversity and Ecosystem Services or the Framing of Scientific Knowledge within the Law of Sustainable Development**

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## **Abstract**

The article analyses the Intergovernmental Science-Policy Platform for Biodiversity and Ecosystem Services (IPBES) through the spectrum of international environmental law. It unpacks the epistemic logics within which IPBES operates and emphasises the normative constructions underlying the mechanism, arguing that IPBES is best understood in light of the rationale and principles of the law of sustainable development. On that basis, the article provides an in-depth discussion of IPBES, and in particular of i) its mandate analysed in light of the principles of the Rio Declaration on Environment and Development, ii) its scope that combines a temporal and spatial perspective to scientific knowledge and iii) its outreach activities seeking to co-operate with a variety of partners, interpreted as an embodiment of the ‘global partnership’ that the Rio Declaration calls for.

## **Keywords**

IPBES; science-policy interface; sustainable development; biodiversity; ecosystem services; environmental knowledge

## **1. Introduction**

The United Nations Environment Assembly, at its first session in 2014, recognised that there is an urgent need to bridge gaps in our knowledge of the state of the environment.<sup>1</sup> It followed the Rio+20 Summit convened two years earlier to tackle the challenges arising in the

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<sup>1</sup> “Science-policy interface”, United Nations Environment Assembly Resolution 1/4 (2014), Preamble.

implementation of the outcomes of the previous major summits on sustainable development.<sup>2</sup> The summit had acknowledged the need to ‘facilitate informed policy decision-making on sustainable development issues’ by strengthening the science-policy interface (SPI).<sup>3</sup> One of the latest developments in this field, mentioned in the Outcome Document of the Rio+20 Summit,<sup>4</sup> has been the creation of the Intergovernmental Platform for Biodiversity and Ecosystem Services (IPBES).

IPBES was established in 2012 as an inter-governmental mechanism to provide scientific information in the field of biodiversity and ecosystem services. It is now a fully functioning body, with 124 State Parties, which adopted its first methodological<sup>5</sup> as well as thematic assessment reports in 2016.<sup>6</sup> The creation of the Platform can be considered a milestone in the landscape of international environmental governance<sup>7</sup>: designed with a clear intention of replicating the well-established model of the Intergovernmental Panel on Climate Change (IPCC),<sup>8</sup> IPBES could become a similarly central institution in the biodiversity regime. Given the renewed commitment of the international community to halt biodiversity loss in the form of Goal 15 of the 2030 Agenda for Sustainable Development Goals,<sup>9</sup> the new SPI is called to play a key role in furthering the implementation of existing international norms and policies in the field of conservation which have so far failed to curb the biodiversity crisis.

Based on the premise that a science-policy interface cannot be understood irrespective of the international legal context within which it was elaborated and now operates, the article provides an analysis of IPBES through the spectrum of international environmental law. Given that IPBES is still in its first years of existence, and with its annual plenaries having primarily concentrated on developing the Platform’s rulebook, the substantive work of the Platform has only just started. Much remains to be seen about how the modalities of IPBES

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<sup>2</sup> “Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development”, United Nations General Assembly Resolution 64/236 (2009).

<sup>3</sup> “The Future We Want”, UNGA Res. 66/228 (2012), para 276.

<sup>4</sup> *Ibid.*, para 204.

<sup>5</sup> S. Ferrier *et al* (eds.), “Summary for policymakers of the methodological assessment of scenarios and models of biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services” (2016).

<sup>6</sup> S.G. Potts *et al* (eds.), “Summary for policymakers of the assessment report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on pollinators, pollination and food production” (2016).

<sup>7</sup> Decision IPBES-2/5, Annex I, “Work programme for the period 2014-2018”.

<sup>8</sup> Editorial, “Wanted: An IPCC for Biodiversity” 465 *Nature* (2010) p. 525; Anne Larigauderie and Harold Mooney, “The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services: Moving a Step Closer to an IPCC-like Mechanism for Biodiversity”, 1(2) *Current Opinion in Environmental Sustainability* (2010) pp. 9-14.

<sup>9</sup> “Transforming our world: the 2030 Agenda for Sustainable Development”, UNGA Resolution 70/1 (2015).

will frame its work in practice. This article therefore concentrates on the design of IPBES to understand how the legal imaginary has influenced its design, which will, in turn, affect how, and to whom, knowledge is communicated. The article relies on the rationale of sustainable development, as developed in the Rio Declaration on Environment and Development,<sup>10</sup> to provide an in-depth analysis of IPBES, including its i) mandate, ii) scope and iii) outreach activities. It starts by briefly presenting how IPBES was created, and within which normative context it is called to operate (Part 2). It then analyses its mandate in light of the general principles of the law of sustainable development adopted at the Rio Summit (Part 3). In a fourth section, the piece explains how IPBES combines a temporal and spatial perspective to scientific knowledge (Part 4). It then interprets the outreach activities with a variety of partners as an embodiment of the ‘global partnership’ that the Rio Declaration calls for (Part 5). The article concludes with some remarks on the parallel evolution of the law of sustainable development and IPBES (Part 6).

## **2. The creation of IPBES: historical and normative context**

The section introduces the reader to IPBES by briefly explaining the circumstances of its creation (2.1). It then presents the normative context within which it evolves, and which is used throughout the piece to analyse the mechanism (2.2).

### ***2.1. Brief historical account***

IPBES was established in 2012 as a direct response to the Millennium Ecosystem Assessment (MA) that was conducted between 2001 and 2005.<sup>11</sup> The MA, called for by United Nations Secretary-General Kofi Annan in 2000<sup>12</sup> and coordinated by the United Nations Environment Programme (UNEP), was the first scientific appraisal of the conditions and evolution of the world’s ecosystems. It concluded that biodiversity and ecosystem services are declining at an unprecedented rate.<sup>13</sup> The report estimated that 60 per cent of the assessed ecosystem services

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<sup>10</sup> Rio de Janeiro Declaration on Environment and Development (Rio de Janeiro, 3 to 14 June 1992), (1992) 31 ILM 876 (‘Rio Declaration’).

<sup>11</sup> For a full account, see inter alia Alice Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014); Alice Vadrot, “The Birth of a Science-Policy Interface for Biodiversity: The History of IPBES”, in Marie Hrabanski and Denis Pesche (eds.), *The Intergovernmental Platform on Biodiversity and Ecosystem Services: Meeting the Challenges of Biodiversity Conservation and Governance* (2016) 41-77. For a legal perspective, see Sandrine Maljean-Dubois, “La Plateforme Intergouvernementale Scientifique et Politique sur la Biodiversité et les Services Écosystémiques (IPBES)”, (2014) 25 *Journal International de Bioéthique* 55.

<sup>12</sup> Kofi Annan, *We the Peoples: The Role of the United Nations in the 21st Century* (2000) p. 65.

<sup>13</sup> Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis* (2005), Finding 1, at 2.

were being degraded or used unsustainability.<sup>14</sup> These dramatic conclusions were followed up by a conference on ‘Biodiversity, Science and Governance’ held in Paris in January 2005 during which former French President Jacques Chirac initiated a consultative process to assess the need, scope and possible form of an international mechanism of scientific expertise on biodiversity. The process, which met in 2006 and 2007 under the name IMoSEB, for international mechanism of scientific expertise on biodiversity, concluded that intergovernmental and multi-stakeholders meetings should be held to further study the possibility of establishing such SPI.

Three ad-hoc intergovernmental and multi-stakeholders meetings on an intergovernmental science-policy platform on biodiversity and ecosystem services were then organised by UNEP in 2008 (in Putrajaya, Malaysia), 2009 (in Nairobi, Kenya) and 2010 (in Busan, Republic of Korea) to discuss of the possibility of establishing a new body. The ‘gap analysis’ report produced by UNEP ahead of the meetings noted a lack of coordination between pre-existing policy-science interfaces and the various stakeholders active in the field of biodiversity and ecosystem services.<sup>15</sup> It contributed to building consensus over the fact that a shared knowledge base would raise awareness on the magnitude of the biodiversity issue,<sup>16</sup> and that bridging the gap between science and decision-makers was necessary to reduce biodiversity loss.<sup>17</sup> The three meetings culminated in the ‘Busan Outcome’ that concluded that an intergovernmental science-policy platform on biodiversity and ecosystem services should be established and set the priorities that would guide the work of the Platform.<sup>18</sup>

In December 2010, the UN General Assembly asked the UNEP to convene a plenary to determine modalities and institutional arrangements for the Platform.<sup>19</sup> The plenary was held in two sessions, in June 2011 in Nairobi and in April 2012 in Panama City, and resulted in the adoption of a resolution creating IPBES.<sup>20</sup> It gives the Platform the mandate to

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<sup>14</sup> Ibid., at 6.

<sup>15</sup> “Gap Analysis for the Purpose of Facilitating the Discussions on How to Improve and Strengthen the Science-Policy Interface on Biodiversity and Ecosystem Services” UNEP/IPBES/2/INF/1 (2009), p. 42, para 8.

<sup>16</sup> Vadrot, supra note 11, p. 231.

<sup>17</sup> See, *inter alia*, Vadrot, supra note 11, p. 27; Kal Raustiala and David Victor, “Biodiversity since Rio: The Future of the Convention on Biological Diversity” (1996) 38-4 *Environment: Science and Policy for Sustainable Development* 2.

<sup>18</sup> UNEP/IPBES/3/3, “Report of the third ad hoc intergovernmental and multi-stakeholder meeting on an intergovernmental science-policy platform on biodiversity and ecosystem services” (‘Busan Outcome’), para 6-7.

<sup>19</sup> UNGA Res 65/162 (20 December 2010), para 17.

<sup>20</sup> “Resolution: Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services”, in “Report of the second session of the plenary meeting to determine the modalities and institutional arrangements for the IPBES” UNEP/IPBES.MI/2/9 (2012), Annex I (‘Panama resolution’).

‘strengthen the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human well-being and sustainable development’, and assigns it five functions: i) to respond to requests from governments; ii) to catalyse the generation of new knowledge; iii) to produce assessments of existing knowledge; iv) to support policy formulation and implementation; and v) to build capacities relevant to achieving its goal.<sup>21</sup> Since then, IPBES has held five plenaries that have concentrated mainly on finalising the operational details of the Platform by adopting multiple procedural decisions<sup>22</sup> as well as a conceptual framework to support the implementation of the Platform and guide its work.<sup>23</sup> Taking the form of a graph, the conceptual framework, adopted in December 2013,<sup>24</sup> aims to summarise the complex ‘relationships between the natural world and human societies’ to identify ‘the main elements, together with their interactions, that are most relevant to the Platform’s goal and should be the focus of assessments.’<sup>25</sup> This important document was followed by the adoption of a work programme for the period 2014-2018,<sup>26</sup> and the publication of the Platform’s first thematic assessment report pertaining to pollinators, pollination and food production.<sup>27</sup> With on-going work undertaken on a number of thematic, regional and global assessments,<sup>28</sup> the substantive work of IPBES is therefore now well under way.

## 2.2. *The normative context*

At a time when IPBES is consolidating as a key mechanism in the landscape of biodiversity governance, the piece proposes to analyse IPBES via the spectrum of international law. This is based on the recognition that SPIs operate within normative assumptions and institutional frameworks that influence the way they are designed and how they operate. Although they de-

<sup>21</sup> Ibid., Appendix I “Functions, operating principles and institutional arrangements of the Platform”.

<sup>22</sup> See, in particular, Decision IPBES/1/1, “Rules of procedure for the Plenary of the Platform” (2013); Decision IPBES/1/3, “Procedure for receiving and prioritizing requests put to the Platform” (2013); Decision IPBES-3/3 “Procedures for the preparation of Platform deliverables” (2015).

<sup>23</sup> For a historical overview of the adoption of the conceptual framework, see Maud Borie and Mike Hulme, “Framing Global Biodiversity: IPBES between Mother Earth and Ecosystem Services”, 54 *Environmental Science & Policy* (2015), pp. 487-496; Maud Borie and Denis Pesche, “Making the IPBES Conceptual Framework: a Rosetta Stone?”, in Hrabanski and Pesche, *supra* note 11, pp. 135-153; Sandra Díaz, Sebsebe Demissew, Carlos Joly, W. Mark Lonsdale, Anne Larigauderie, “A Rosetta Stone for Nature’s Benefits to People”, 13 *PLOS Biology* (2015), referring to the conceptual framework as a ‘Rosetta Stone’ that provides a common understanding of different knowledge systems.

<sup>24</sup> Decision IPBES-2/4, “Conceptual framework for the Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services” (2013) (‘conceptual framework’).

<sup>25</sup> Ibid., para 3.

<sup>26</sup> Decision IPBES-2/5, “Work programme for the period 2014–2018”, *supra* note 7.

<sup>27</sup> S.G. Potts *et al* (eds.), “Summary for policymakers of the assessment report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on pollinators, pollination and food production” (2016).

<sup>28</sup> See Decision IPBES-2/5, “Work programme”, *supra* note 7, deliverables 2(a), (b), (c) and 3(a), (b) (i),(ii), (iii).

contextualise scientific knowledge by condensing it and translating it for the purposes of another new context (ie. decision-making), the process is more one of re-contextualisation than of de-contextualisation. Scientific knowledge is indeed re-packaged to facilitate its transmission to decision-makers: how it is ‘re-branded’ is the reflection of beliefs, discourses and practices.<sup>29</sup> Hence, SPIs cannot be analysed irrespective of the normative context within which they operate.

The influence that the normative context has on the design and operation of an SPI can differ considerably from one SPI to the other. Take for instance the IPCC and IPBES. In the first case, the SPI was designed to provide scientific knowledge that might be used to create an international legal regime relative to climate change, and in particular to negotiate an international treaty: in other words, the IPCC was driving the legal construction.<sup>30</sup> In the second case, IPBES was created twenty years after the adoption of the main biodiversity convention, the Convention on Biological Diversity (CBD).<sup>31</sup> It is a new player in a regime that operates on the basis of well-established norms and is structured around a multiplicity of institutions active in the field of conservation.

One of the key norms underpinning the biodiversity regime is the concept of ‘sustainable development’. This is evidenced by the fact that the first document that mentioned sustainable development did so in relation to conservation. Prepared by the International Union for Conservation of Nature (IUCN) in 1980 and entitled ‘World Conservation Strategy: Living Resource Conservation for Sustainable Development’, it defined sustainable development as ‘the integration of conservation and development to ensure that modifications to the planet do indeed secure the survival and well-being of all people’.<sup>32</sup> Highlighting the relationship between a reasonable utilisation of resources and socio-economic development,<sup>33</sup> the definition provided that the willingness to ensure human well-being was driving the sustainability approach. After the report of the World Commission on Environment and Development that brought the term to the forefront of international

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<sup>29</sup> Henrik Selin and Noelle Eckeley, “Science, Politics and Persistent Organic Pollutants. The Role of Scientific Assessments in International Environmental Co-operation”, 3 *International Environmental Agreements: Politics, Law and Economics* (2003) pp. 17-42, at 20.

<sup>30</sup> “Protection of global climate for present and future generations of mankind”, UNGA Resolution 43/53, para 10(e), requesting that the IPCC provides recommendations regarding elements for inclusion in a possible future convention on climate.

<sup>31</sup> Convention on Biological Diversity, Nairobi, 22 May 1992, in force 29 December 1993, (1992) 31 ILM 822 (‘CBD’).

<sup>32</sup> IUCN, *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (1980).

<sup>33</sup> Nicolas Schrijver, “The Evolution of Sustainable Development in International Law: Inception, Meaning and Status”, in *Collected Courses of the Hague Academy of International Law* (2008), chapter II on the origins of sustainable development.

discussions,<sup>34</sup> the sustainable development rationale was enshrined in the Rio Declaration on Environment and Development,<sup>35</sup> and found its expression in the legally-binding Convention on Biological Diversity, the first multilateral agreement to provide a comprehensive framework to guide decisions relative to biodiversity.<sup>36</sup> The adoption of the concept of sustainable development came at a time when the question of the role of scientific knowledge in decision-making was gaining prominence on the international agenda, with the realisation that scientific uncertainty could not justify inaction.<sup>37</sup> It was also acknowledged that better science-policy dialogues were needed to implement the sustainable development agenda.<sup>38</sup>

The introduction of the concept of sustainable development was so transformational that it substantially changed the international perspective to environmental protection. The call of Principle 27 of the Rio Declaration to co-operate in the ‘further development of international law in the field of sustainable development’ was hailed as a ‘change of paradigm’ in international environmental law,<sup>39</sup> as it was called to take into account the priority of socio-economic development over environmental considerations.<sup>40</sup> Although there is a general consensus that Principle 27 reflected a ‘profound renewal of international environmental law’,<sup>41</sup> the doctrine disagrees over the degree to which it has changed the field. Doctrinal arguments can be grouped in three perspectives. Firstly, some consider that international environmental law has been replaced by a law of sustainable development: according to this view, the adoption of the notion of sustainable development led to a paradigm change that justified the emergence of a new field of international law.<sup>42</sup> Secondly, some argue that the law of sustainable development is different from international environmental law. It would be a ‘broad umbrella accommodating the specialised fields of international law which aim to promote economic development, environmental protection and respect for civil and political rights’<sup>43</sup>: under this perspective, the law of sustainable

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<sup>34</sup> World Commission on Environment and Development, “Our Common Future” (1987) UN Doc. A/42/427.

<sup>35</sup> Rio Declaration, *supra* note 10.

<sup>36</sup> CBD, *supra* note 31.

<sup>37</sup> Rio Declaration, *supra* note 10, Principle 15 on the precautionary approach.

<sup>38</sup> Agenda 21, Annex II to the Report of the United Nations Conference on Environment and Development, (Rio de Janeiro, 3-14 June 1992) UN Doc. A/CONF.151/26, para 35.1-35.25 on science as a means of implementation.

<sup>39</sup> Marc Pallemmaerts, “International Environmental Law in the Age of Sustainable Development: A Critical Assessment of the UNCED Process”, 15 *Journal of Law and Commerce* (1995) pp. 623-676, at 674.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Alexandre Kiss and Stéphane Doumbé-Billé, “La Conférence des Nations Unies sur l’environnement et le développement”, 38 *Annuaire français de droit international* (1992) pp. 823-843, at 841, talking about ‘un renouvellement profond du droit international de l’environnement’.

<sup>43</sup> Philippe Sands, “International Law in the Field of Sustainable Development”, 65 *British Yearbook of International Law* (1994) pp. 303-381, at 379.



development extends to different branches of international law. Thirdly, the law of sustainable development can be seen as adding a fundamental pillar to the field of international environmental law that was framed by the Stockholm conference as a field primarily concerned with the prevention of environmental harm.<sup>44</sup> The concept of sustainable development adds another pillar to the field, one concentrating on finding a balance<sup>45</sup> between different interests (by integrating environmental, economic and social considerations), different temporalities (present and future generations), and different actors (including global and local ones). This approach is the one which will be favoured here: although the precise meaning of the expression ‘law of sustainable development’ remains open to interpretation, the article sees it as a perspective taken by international environmental law, one that is concerned with balancing different interests to design optimal environmental policies. It presents in the following sections how IPBES can be construed as a mechanism deriving from the law of sustainable development.

### **3. A mandate enshrined in the semantic framework of the Rio conference**

The mandate of IPBES was agreed in the 2010 Busan Outcome adopted at the third and final ad hoc meeting on IPBES that set the path for the establishment of the Platform. It reads as follows: ‘to strengthen the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human well-being and sustainable development’.<sup>46</sup> In 2012, the Panama resolution that established IPBES confirmed the wording of the Platform’s mandate as agreed in Busan and explicitly framed the Platform within the law of sustainable development by recalling the Rio Summit and subsequent conferences relative to sustainable development in its Preamble.<sup>47</sup> Within this context, the mandate of the Platform is best understood, and interpreted, in light of the guiding principles put forward in the Rio Declaration. This section offers a detailed discussion of the Platform’s mandate by analysing its material scope (3.1), as well the three objectives assigned to the work of the Platform – promote conservation and sustainable use of biodiversity (3.2); long-

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<sup>44</sup> See the consecration of the preventive approach in Principle 21 of the Stockholm Declaration on Human Environment. Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972), (1972) 11 ILM 1416.

<sup>45</sup> Pierre-Marie Dupuy and Jorge E. Viñuales, *International Environmental Law* (2015) pp. 53-54.

<sup>46</sup> “Busan Outcome”, supra note 18, Annex, para 6.

<sup>47</sup> “Panama resolution”, supra note 20, recalling the Rio Declaration, Agenda 21, the Programme for Further Implementation of Agenda 21, the Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development.

term human well-being (3.3); and sustainable development (3.4) – in light of the semantic lexicon of the Rio Declaration.

### **3.1. Biodiversity and ecosystems services**

IPBES, as its name provides, operates in the field of ‘biodiversity and ecosystem services’. The term ‘biodiversity’, a contraction for ‘biological diversity’, can be traced back to the National Forum on BioDiversity held in Washington DC in 1986, under the auspices of the American National Academy of Science and the Smithsonian Institute,<sup>48</sup> to assemble knowledge on the state of global biological diversity. It then quickly spread in the scientific and political spheres,<sup>49</sup> and was adopted internationally in the 1992 Convention on Biological Diversity where it is defined as ‘variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems’.<sup>50</sup> Although the definition gives a rather specific meaning to the term ‘biodiversity’, it should however be noted that the term remains largely used as a broad synonym to the term ‘environment’. This is because biodiversity is defined in relation to our perceptions of nature and social relationships with it<sup>51</sup>: as a result, references to biodiversity tend to be used as a lexical tool to facilitate the study of environmental problems.

The material scope of IPBES is not limited to biodiversity but also extends to ecosystem services. Although the term ‘biodiversity’ as defined by the CBD includes ecosystems, the additional reference to ecosystems emphasises the complex interactions between different organisms forming a ‘functional unit’.<sup>52</sup> However, it is the concept of ‘ecosystem services’, and not ‘ecosystem’ *tout court*, that was included in the mandate of IPBES. The concept of ecosystem services, arising from the idea of ‘environmental services’ of the 1970s which was then re-named ‘ecosystem services’ in the mid-1980s, was popularised by the MA. It gave an authoritative definition of ‘ecosystem services’ as ‘the benefits people obtain from ecosystems’,<sup>53</sup> which include provisioning services (eg. food), regulating services (eg. climate regulation), cultural services (eg. recreational and spiritual

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<sup>48</sup> Vadrot, *supra* note 11, p. 21.

<sup>49</sup> *Ibid.*, pp. 23-24.

<sup>50</sup> CBD, *supra* note 31, Article 2.

<sup>51</sup> Vadrot, *supra* n. 11, pp. 22-23.

<sup>52</sup> CBD, *supra* note 31, Article 2, defining an ecosystem as a ‘dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit’.

<sup>53</sup> Millenium Ecosystem Assessment, *Ecosystems and Human Well-Being: Synthesis* (2005) p. v.

benefits) and supporting services (eg. photosynthesis).<sup>54</sup> The Platform has not adopted a definition of ecosystem services, but, as an institution which builds on the work of the MA, can be considered to follow its definition<sup>55</sup> – with the caveat, however, that the Platform prefers to concentrate on the ‘contributions’ of ecosystems to human well-being, and not on the ‘benefits’ obtained by people from ecosystems, a term deemed to fail to reflect the plurality of approaches to nature.<sup>56</sup>

The distinction between biological diversity and ecosystem services is widely made in the literature. However what distinguishes the two, and how they relate to each other, remains a matter of contention: it is uncertain whether biodiversity is the foundation of ecosystem services,<sup>57</sup> is itself an ecosystem service,<sup>58</sup> or is an enabler of ecosystem services that also has an intrinsic value. The main difference lies in the fact that the term ‘ecosystem services’ is generally considered more likely to speak to an audience of decision-makers.<sup>59</sup> Indeed, the term ‘biodiversity’ is said difficult to grasp for non-specialists<sup>60</sup> that fail to understand the benefits and value of biodiversity: references to biodiversity thereby fail to mobilise the public and decision-makers and acts as an obstacle in the fight against biodiversity loss. Conversely, the concept of ‘ecosystem services’ – and the exercise of ecosystem valuation attached to it – is deemed to make a better case for biodiversity conservation because it highlights the benefits that stem from protecting ecosystems. As a result, it transforms biodiversity into ‘the nature that politics can see’<sup>61</sup> and is more likely to mobilise policy-makers.<sup>62</sup> This choice, of course, is not uncontroversial, with conservation biologists and ecologists considering that nature has intrinsic worth that cannot be submitted to an economic

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<sup>54</sup> Idem.

<sup>55</sup> “Panama resolution”, supra note 20, Appendix I, para 26, reproducing the definition found in the MA, but kept in brackets.

<sup>56</sup> The reference in the IPBES conceptual framework to ‘nature’s benefits to people’ was replaced by ‘nature’s contributions to people’ in 2017 to ‘reflect a pluralistic approach combining both western and ‘mother earth’ views’: “Summary of Stakeholder Day and the Fifth Session of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services”, 31(34) *Earth Negotiations Bulletin* (2017).

<sup>57</sup> Millenium Ecosystem Assessment, supra note 53, equating ‘life on Earth’ with ‘biodiversity’ and suggesting that biodiversity underpins all ecosystem services.

<sup>58</sup> This would be the case if the intrinsic value of biodiversity falls within the ambit of ‘cultural services’.

<sup>59</sup> For a detailed analysis of the concept of ‘ecosystem services’ in the environmental science and policy literature (including its advantages and limitations), see the following review article: Sharachandra Lele, Oliver Springate-Baginski, Roan Lakerveld, Debal Deb and Prasad Dash, “Ecosystem Services: Origins, Contributions, Pitfalls, and Alternatives”, 11(4) *Conservation and Society* (2013) pp. 343-358.

<sup>60</sup> UNEP/IPBES/3/INF/1/Add.1 “Analysis of the assessment landscape for biodiversity and ecosystem services. Note by the secretariat” (2010), para 4(c).

<sup>61</sup> Céline Granjou, Isabelle Mauz, Séverine Louvel and Virginie Tournay, “Assessing Nature? The Genesis of the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES)”, 18(9) *Science Technology Society* (2013) pp. 9-27, at 10.

<sup>62</sup> Idem.

valuation.<sup>63</sup> In this context, the reference to ecosystem services in the mandate of IPBES is therefore a pragmatic and strategic choice: it is used as an ‘advocacy tool’<sup>64</sup> to translate biodiversity issues into a language to which decision-makers are more receptive. The wording of the material scope of IPBES already frames the role of the Platform as a bridge between the world of science – gathering knowledge on ‘biodiversity’ – and the world of policy – generally concerned with the potential gains derived from biodiversity protection, and thus interested in ‘ecosystem services’.<sup>65</sup>

### **3.2. Conservation and sustainable use of biodiversity**

The first objective of IPBES, according to its mandate, is to promote ‘conservation and sustainable use of biodiversity’. Because the two terms – conservation and sustainable use – are not defined in the CBD, it remains to be seen whether they are synonymous or whether, and what, distinguishes them. It is uncertain whether the objective of ‘conservation’ is concerned with the utilisation of resources or only provides for their protection.<sup>66</sup> However, the added reference to ‘sustainable use’, a direct translation of the sustainable development objective into a legal obligation,<sup>67</sup> leaves no doubt about the fact that the Platform does not aim to provide scientific knowledge with the sole goal of furthering the protection of biodiversity. Rather, as made explicit in the scoping report for the thematic assessment on the sustainable use of wild species,<sup>68</sup> it seeks to enable policy-makers to take informed decisions that achieve a balance between economic exploitation and environmental protection of biological resources.

Because this part of the mandate is an almost *verbatim* replication of two of the three objectives of the CBD,<sup>69</sup> it frames the Platform as an instrument which directly contributes to the fulfillment of the objective of the CBD. At the same time, the combination of the most frequently used terms in biodiversity-related texts ensures that the mandate also speaks to

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<sup>63</sup> For a summary of the main critiques towards the ‘services’ approach, see Sharachchandra Lele et al, *supra* note 59, p. 348. See also Douglas McCauley, “Selling Out on Nature” 443(7) *Nature* (2006) 27-28.

<sup>64</sup> Sharachchandra Lele et al, *supra* note 59, p. 348..

<sup>65</sup> Borie and Hulme, *supra* note 23, at 493. See also Alice Vadrot, “The Epistemic and Strategic Dimension of the Establishment of the IPBES: ‘Epistemic Selectivities’ at Work”, 27(4) *Innovation: The European Journal of Social Science Research* (2014), pp. 361-378.

<sup>66</sup> Rosemary Rayfuse, “Biological Resources”, in Daniel Bodansky, Jutta Brunnée, Ellen Hey (eds.), *The Oxford Handbook of International Environmental Law* (2010) pp. 362-394, at 371.

<sup>67</sup> ‘Sustainable use’ refers to the ‘duty of States to ensure sustainable use of natural resources’, considered an emerging rule of customary law: International Law Association, “Legal Aspects of Sustainable Development: Final Report”, New Delhi, 70<sup>th</sup> session, 2002, Principle 1.

<sup>68</sup> IPBES/5/L.7, “Scoping report for a thematic assessment on the sustainable use of wild species: deliverable 3 (b) (iii)” (2017), para 24-25.

<sup>69</sup> CBD, *supra* note 31, Article 1, reading as follows: ‘conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources’.

other relevant conventions, irrespective of whether they only make a reference to conservation,<sup>70</sup> and are more recent conventions that refer to sustainable use<sup>71</sup> or management.<sup>72</sup> It ensures that the work of IPBES shares similar objectives to the biodiversity conventions adopted before as well as after the Rio Summit.

### ***3.3. Long-term human well-being***

The second objective of the Platform is to further ‘long-term human well-being’. In contrast with the other two elements of the mandate that carry more legal weight because they are well-established norms of international environmental law, this objective takes the form of a guiding aspiration. It reflects the ultimate goal of sustainable development, which is to ensure human well-being by promoting economic development in a sound environment, as recognised explicitly in the first principle of the Rio Declaration,<sup>73</sup> and applied, in the context of biodiversity, in the MA.<sup>74</sup> This objective complements the reference to ‘ecosystem services’ chosen to highlight the direct gains derived from conservation and sustainable use to better mobilise decision-makers and leaves no doubt as to the anthropocentric nature of the IPBES mandate.

However, precisely because ‘long-term human well-being’ is an aspiration rather than a binding norm, how this should translate in the practice of States and of the Platform remains vague. Indeed, ‘well-being’ is generally considered a subjective experience and, from a legal standpoint, might be difficult to quantify. The MA, whose conceptual framework recognised that changes in ecosystems were causing ‘changes in human well-being’,<sup>75</sup> defined well-being as follows:

‘the basic materials for a good life, such as secure and adequate livelihoods, enough food at all times, shelter, clothing and access to goods; health, including feeling well and having a healthy

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<sup>70</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 3 March 1973, in force 1 July 1975, 993 UNTS 243 (‘CITES’), Article XI(3)(c); UNESCO Convention for the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, in force 17 December 1975, (1972) 11 ILM 1358 (‘World Heritage Convention’), Article 2; Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 23 June 1979, in force 1 November 1983, (1980) 19 ILM 15 (‘CMS’), title.

<sup>71</sup> International Treaty on Plant Genetic Resources for Food and Agriculture, Rome, 4 November 2002, in force 31 March 2004, available online: <http://www.planttreaty.org/content/article-xiv> (last accessed 10 August 2016) (‘ITPGRFA’), Article 1.1. See, however, Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 2 February 1971, in force 21 December 1975, 996 UNTS 245 (‘Ramsar Convention’), on ‘wise use’ (Article 2(6)) that could be interpreted as a pre-Rio reference to sustainable use.

<sup>72</sup> Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Paris, 17 June 1994, in force 26 December 1996, (1994) 33 ILM 1328 (‘Desertification Convention’), Article 2(2).

<sup>73</sup> Rio Declaration, supra note 10, Principle 1 reading as follows: ‘[h]uman beings are at the centre of concerns for sustainable development’.

<sup>74</sup> See in particular, Millennium Ecosystem Assessment, supra note 13, p. vi, highlighting the ‘linkages between ecosystem services and human well-being’.

<sup>75</sup> Ibid., p. v.

physical environment, such as clean air and access to clean water; good social relations, including social cohesion, mutual respect, and the ability to help others and provide for children; security, including secure access to natural and other resources, personal safety, and security from natural and human-made disasters; and freedom of choice and action, including the opportunity to achieve what an individual values doing and being'.<sup>76</sup>

This broad definition hints at the existence of core, inalienable, elements that contribute to 'well-being'.<sup>77</sup> The framing of the MA highlights, albeit implicitly, the fact that 'well-being' is to be defined in relation to basic human rights.<sup>78</sup> The mandate of IPBES applies Principle 1 of the Rio Declaration, generally construed as embracing a human rights approach to environmental protection<sup>79</sup> and complements the current interest of law and policy for the impacts of biodiversity issues on human rights.<sup>80</sup> It calls on decision-makers to use the scientific knowledge gathered by IPBES to promote human rights, and to keep in mind their human rights obligations when taking decisions that might affect, or, on the contrary, protect, biodiversity. The mandate also calls on them to cater to the well-being of different generations,<sup>81</sup> embracing the inter-generational approach found in the Rio Declaration<sup>82</sup> and the CBD.<sup>83</sup> Given its aim to further 'long-term human well-being', the Platform is expected to gather scientific knowledge that can contribute to making long sighted decisions – highlighting the need for an anticipatory perspective discussed in section 4 – and that facilitates the monitoring of the state of the biodiversity on a continuous basis.<sup>84</sup>

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<sup>76</sup> Idem.

<sup>77</sup> This is in line with William Talbott, *Human Rights and Human Well-Being* (2010) p. 73, recognising that there is no definition of well-being but that it is 'one of the bases of human rights'.

<sup>78</sup> This was explicitly recognised in Achim Steiner, "Focusing on the Good or the Bad: What can International Environmental Law do to Accelerate the Transition Towards a Green Economy?", 103 *American Society of International Law Proceedings* (2009) p. 3, at 9, stressing a 'fundamental link between ecosystem services and human rights'.

<sup>79</sup> Jorge E. Viñuales, "The Rio Declaration: A Preliminary Study", in Jorge E. Viñuales (ed.), *The Rio Declaration on Environment and Development* (2015) pp. 2-60, at 22.

<sup>80</sup> For a clarification of the relationship between biodiversity and human rights, see the on-going work of the Special Rapporteur on human rights and the environment: <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Biodiversity.aspx> (last accessed 10 August 2016).

<sup>81</sup> This is confirmed by "Report of the ad hoc intergovernmental and multistakeholder meeting on an intergovernmental science-policy platform on biodiversity and ecosystem services" (2016), providing that 'it [is] essential to ensure that future generations [...] have access to ecosystem services as a means of sustaining humankind'. This is in line with the definition of sustainable development given by the World Commission on Environment and Development, "Our Common Future" (1987) UN Doc. A/42/427, para 1.

<sup>82</sup> Rio Declaration, supra note 10, Principle 3.

<sup>83</sup> CBD, supra note 31, Preamble.

<sup>84</sup> Stewart Lockie, Hedda Ransan-Cooper, "Biodiversity and Sustainable Development", in Michael Reclift and Delyse Springett (eds.), *Routledge International Handbook of Sustainable Development* (2015) pp. 123-136, at 124, on how sustainability demands learning.

### ***3.4. Sustainable development***

The final element of the mandate of IPBES provides that the Platform will seek to promote the Rio objective of ‘sustainable development’. It is noteworthy that although the mandate of IPBES is very close to the mandate of the MA, the term ‘sustainable development’ was not present in the objective of the MA.<sup>85</sup> This addition might appear redundant in light of the first element of the mandate of IPBES – the ‘conservation and sustainable use’ objective – which, like sustainable development, encourages the integration of environmental issues with economic considerations.<sup>86</sup> However, the final reference to ‘sustainable development’, being the last element of the mandate, reinforces the framing of IPBES in its normative context.

Three justifications for this addition can be put forward. Firstly, the reference to sustainable development ensures that IPBES does not merely replicate the objective of the CBD and thereby alleviates the risks of depicting IPBES as being solely at the service of the CBD. Secondly, while the reference to ‘sustainable use’ promotes the integration of environmental issues and economic considerations, it does not include the other two constitutive elements of the sustainable development concept: intra-generational<sup>87</sup> and inter-generational equity.<sup>88</sup> Given that the long-term perspective embraced by the Platform is also present in the second pillar of the mandate (in the form of the reference to ‘long-term human well-being’), the novelty provided by the reference to sustainable development lies arguably in the indirect reference made to intra-generational equity. Thirdly, the added value of the reference to sustainable development is also a contextual one, as it leaves no uncertainties regarding the overall objective of the Platform: it seeks to reconcile the three pillars – economic, environmental and social – of sustainable development. It therefore highlights the challenges which IPBES should contribute to alleviate: finding a balance between the environmental and economic value of biodiversity (found in the reference to biodiversity and ecosystem services) and between the global production of scientific knowledge and the need to cater to the very diverse impacts on human well-being of biodiversity loss at the local level (discussed further in section 4).

### ***3.5. Conclusion***

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<sup>85</sup> The objective of the MA was to ‘assess the consequences of ecosystem change for human well-being and to establish the scientific basis for actions needed to enhance the conservation and sustainable use of ecosystems and their contributions to human well-being’. Millennium Ecosystem Assessment, *supra* note 13, p. v.

<sup>86</sup> Rio Declaration, *supra* note 10, Principle 4.

<sup>87</sup> *Ibid*, Principle 7.

<sup>88</sup> *Ibid*, Principle 3.

The mandate of IPBES is epistemically consistent with the lexicon elaborated at the Rio Summit, enshrined in the CBD and reaffirmed in the MA. The rationale of the Platform finds its origins in the sustainable development ‘discourse’<sup>89</sup> developed at the Rio Summit. IPBES does not aim to re-conceptualise the existing biodiversity regime, but rather justifies its existence by depicting itself as a mechanism that builds upon existing instruments and previous initiatives in the field of biodiversity. The framing of IPBES on the basis of the concept of sustainable development is consequential as the anthropocentric motivations of the SPI are openly acknowledged: by seeking to find a balance between resource utilisation and environmental protection, it aims to promote human well-being.

It can be expected that the willingness of IPBES to acknowledge that people relate in different ways with nature – leading to the co-existence of multiple conceptualisations of the values of biodiversity<sup>90</sup> – will have an effect on the interpretation of a mandate that looks at biodiversity only from one angle, that of sustainable development. A first step in that direction was made with the adoption of the conceptual framework which, as described above, aims to guide the work of the Platform and followed a slightly different approach to the one adopted in the mandate. It refers to a number of the terms found in the mandate, confirming the relevance of the Rio lexicon to the Platform. Yet, these concepts are coupled with other terms deriving from what is usually referred to as ‘another value system’, meaning from a lexicon embracing an alternative approach to nature. For instance, the term ‘ecosystem goods and services’ is met with the expression ‘Nature’s gifts’; ‘biodiversity and ecosystems’ with ‘Mother Earth’ and ‘systems of life’; and ‘human well-being’ is assimilated to ‘living in harmony with nature’ and ‘living-well in balance and harmony with Mother Earth’. These terms are different from the sustainable development lexicon used in the mandate. It reveals that the mandate of IPBES as it was agreed cannot be taken for granted since alternative terms were adopted a few years later in the conceptual framework. In addition, and although it remains to be seen, at this stage in the Platform’s development, how exactly the conceptual framework will be used and will influence the Platform’s work, it can be expected to contribute to a renewed interpretation of its mandate, raising questions about how to best reconcile a sustainable development approach to biodiversity with other co-existing conceptualisations.

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<sup>89</sup> John Dryzek, “Paradigms and Discourses”, in Daniel Bodansky, Jutta Brunnée, Ellen Hey (eds.), *The Oxford Handbook of International Environmental Law* (2010), pp. 44-62, at 56.

<sup>90</sup> IPBES/3/INF/7, “Preliminary guide regarding diverse conceptualization of multiple values of nature and its benefits, including biodiversity and ecosystem functions and services (deliverable 3 (d))” (2014).



## 4. The temporal and spatial dimensions of scientific knowledge

Having presented the objectives of IPBES as expressed in its mandate, the piece now looks at the type of scientific knowledge that the Platform seeks to gather and transmit to decision-makers. In order to better understand the specificity of the Platform, it draws a comparison with the ‘gold standard’<sup>91</sup> that is the IPCC to show that IPBES departed from the purely anticipatory drive of the IPCC model (4.1), and was designed to operate upon two different dynamics, one temporal, the other spatial (4.2). The dual dimension of scientific knowledge within IPBES confirms the sustainable development framework within which the Platform operates. Put simply, it responds to the two rationales driving the concept of sustainable development, one concerned with ‘sustainability’ that dictates an anticipatory, ie. temporal, perspective; the other with ‘development’, more anchored spatially because requiring the adoption of policies at different governance scales.

### 4.1. The anticipatory perspective of the IPCC

SPIs enhance the ability to foresee environmental damage by synthesising and evaluating information and knowledge in a specific field. By facilitating access to the information needed by decision-makers to evaluate potential risks of environmental harm and to take legislative and administrative measures, SPIs contribute to the anticipation, and thereby, prevention of environmental harm. The IPCC, in its objective to assess information relevant to ‘understanding the scientific basis of risk of human-induced climate change’<sup>92</sup>, is the epitome of this anticipatory approach – not least because the term ‘climate *change*’ has an inherent temporal dimension to it.<sup>93</sup>

The anticipatory objective of the IPCC was made explicit from its creation. Resolution 9 (Cg-X) of the World Meteorological Organisation (WMO) regarding the need for an interdisciplinary entity in charge of scientific issues relative to climate change gave the WMO ‘the responsibility to provide Members with state-of-the art *projections* of *long-term* changes in the global climate’.<sup>94</sup> This approach was confirmed in Resolution 4 (EC-XI) of the WMO executive council creating the IPCC which provided that the role of the IPCC was to

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<sup>91</sup> Granjou *et al*, supra note 61, at 16.

<sup>92</sup> ‘Principles governing IPCC work’, para 2, latest version adopted in October 2013. Available online: [http://www.ipcc.ch/organization/organization\\_history.shtml](http://www.ipcc.ch/organization/organization_history.shtml) (last accessed 10 August 2016).

<sup>93</sup> On the anticipatory dimension of the IPCC, see in particular, Makane M. Mbengue, “The Intergovernmental Panel on Climate Change (IPCC): A Singular Model of Expertise at the International Level”, in Yann Kerbrat and Sandrine Maljean-Dubois (eds.), *The Transformation of International Environmental Law* (2011) pp. 97-116.

<sup>94</sup> World Meteorological Organisation (WMO) Congress, Resolution 9 (Cg-X).

‘maintain and develop further an efficient long-term monitoring system, making it possible to diagnose accurately the current state of the climate system, the *trends*, and the factors having an influence on climate’.<sup>95</sup> The anticipatory perspective of the IPCC translates into its assessments, referring *inter alia* to the future drivers, risks and impacts of climate change and proposing future predictions and pathways<sup>96</sup> – a lexicology that leaves little doubt as to the anticipatory outlook of the Panel.

#### **4.2. The dual dynamic within IPBES**

Contrary to the IPCC, IPBES takes into consideration two different dynamics: (i) ‘changes over time’ and (ii) ‘interactions across spatial scales’.<sup>97</sup> Both dynamics are enshrined in its conceptual framework, IPBES giving equal importance to the temporal (4.1.1) and spatial (4.2.1) dimensions of scientific knowledge.

##### **4.2.1. The anticipatory perspective of IPBES**

Given the initial influence of the IPCC model on the design of IPBES, it comes as no surprise that the anticipatory perspective was particularly strong during the negotiations pertaining to the creation of IPBES. For instance, a concept note written by UNEP in 2008 relative to the establishment of IPBES borrowed heavily from the vocabulary used in the climate change regime, including references to the need to ‘mitigate and adapt’<sup>98</sup> to ‘changes’ in biodiversity.<sup>99</sup> These references stand out because the lexicon of mitigation and adaptation derives from the climate regime and is not drawn from the biodiversity regime. Similarly, the second ad hoc intergovernmental and multi-stakeholder meeting on the establishment of IPBES was concerned with identifying ‘risks’ to biodiversity, an objective that calls for a strong anticipatory version, and identified ‘early warning and horizon scanning’ as a potential area of work.<sup>100</sup>

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<sup>95</sup> WMO Executive Council, Resolution 4 (EC-XI).

<sup>96</sup> See, for instance, IPCC, *Climate Change Report 2014: Synthesis Report, Summary for Policy-makers* (2014) that was divided in the following sections: observed *changes* and their causes; *future* climate change, risks and impacts; *future pathways* for adaptation, mitigation and sustainable development; adaptation and mitigation (emphasis added).

<sup>97</sup> “Conceptual framework”, supra note 23, figure 1. Note this is in line with the conceptual framework of the MA, in Millennium Ecosystem Assessment, supra note 13, p. vii, figure B.

<sup>98</sup> UNEP/IPBES/1/2, “Building on the global strategy for follow-up to the Millennium Ecosystem Assessment and the consultative process towards an international mechanism of scientific expertise on biodiversity. Revised concept note on an intergovernmental science-policy platform on biodiversity and ecosystem services” (2008), p. 2.

<sup>99</sup> Ibid., para 9(c)(i).

<sup>100</sup> Ibid., para 3(a).

However, over the years, the design of the Platform evolved further away from the anticipation-centric semantics of the IPCC. There is no doubt that IPBES remains an anticipatory body, not least because the temporal dimension is enshrined in its mandate referring to ‘long-term human well-being’. However, the temporal outlook of IPBES is strongly anchored in the present and is less forward-looking than the perspective taken by the IPCC: scientific knowledge related to biodiversity seeks to gain a better understanding of the current situation identifying *inter alia* ‘what is known and what is unknown’.<sup>101</sup> This is particularly important because it is estimated that as few as one-seventh of species are known to science, and even the data about known species is insufficient.<sup>102</sup> Identifying potential drivers of change is therefore only a second, additional, step.<sup>103</sup> This explains why the Platform has been given a broader mandate compared to the IPCC,<sup>104</sup> with the functions assigned to IPBES – respond to governments’ requests, complete a set of assessments on the state of knowledge, stimulate further knowledge generation, support policy formulation and build capacities<sup>105</sup> – including but also going beyond anticipation.

#### 4.2.2. The spatial dimensions of IPBES

SPIs influence the way environmental problems are spatially defined. The IPCC, while acknowledging the importance of regions, conceptualises climate ‘first and foremost’ as global,<sup>106</sup> with climate knowledge relying primarily on the simulations of global climate models.<sup>107</sup> While the global outlook of the IPCC has been dictated by the need to frame climate change as a universal issue to enhance multilateral action, the global nature of the knowledge it synthesises tends to marginalise other types of knowledge, such as place-

<sup>101</sup> “Conceptual framework”, supra note 23, para 34.

<sup>102</sup> Stuart Pimm *et al*, “The Biodiversity of Species and their Rates of Extinction, Distribution, and Protection”, 344 *Science* (2014).

<sup>103</sup> See as an example, the perspective taken by the first IPBES thematic assessment on pollinators, supra note 27, that was structured as follows: *role* of native and managed pollinators, *the status and trends* of pollinators and pollinator-plant networks and pollination, *drivers of change*, *impacts* on human well-being, food production in response to pollination declines and deficits and the effectiveness of responses (emphasis added).

<sup>104</sup> Thomas M. Brooks, John F. Lamoreux, Jorge Soberón, “IPBES ≠ IPCC”, 29(10) *Trends in Ecology & Evolution* (2014) pp. 543–545.

<sup>105</sup> “Panama resolution”, Appendix I, supra note 21. For a detailed analysis of these functions, see Jasper Montana, “How IPBES Works: The Functions, Structures and Processes of the Intergovernmental Platform on Biodiversity and Ecosystem Services” (2016) *C-EENRG Working Papers 2016-2*, Cambridge Centre for Environment, Energy and Natural Resource Governance, University of Cambridge.

<sup>106</sup> Esther Turnhout, Art Dewulf, Mike Hulme, “What does Policy-Relevant Global Environmental Knowledge Do? The Cases of Biodiversity and Climate” 18 *Current Opinion in Environmental Sustainability* (2016), pp. 65–72, at 66. See also Silke Beck, “Science”, in Karin Bäckstrand, Eva Lövbrand (eds.), *Research Handbook on Climate Governance* (2015) pp. 286–296.

<sup>107</sup> *Idem*.

specific or indigenous knowledge.<sup>108</sup> This can detach the climate phenomenon from the experiences of the local citizens, hence running the risk of alienating them from climate action.<sup>109</sup>

IPBES has taken a different approach to scientific knowledge<sup>110</sup> and seeks to gather knowledge about biodiversity at different spatial scales. A case could indeed be made that the issue of biodiversity is strongly anchored in spatial realities, as changes in biodiversity occur within small spatial units, with significant variations between regions. While a reduction in carbon emissions anywhere on the planet is equally effective at limiting climate change,<sup>111</sup> local reductions in biodiversity loss have variable effects.<sup>112</sup> In other words, although the loss of biodiversity is a global crisis, biodiversity distribution and its conservation status is heterogeneous and solutions have to be scalable to the specificities of each area.<sup>113</sup> In addition, decision-making that has an impact on biodiversity and ecosystems often takes place at the regional and local levels, thereby calling on IPBES to engage with different levels of governance.

From the outset the Busan Outcome provided that the Platform would ‘recognize the unique biodiversity and scientific knowledge thereof within and among regions’.<sup>114</sup> Acknowledging that there is ‘a polycentric set of interacting governance and knowledge systems at different scales’,<sup>115</sup> the Platform wishes to be relevant for knowledge users ‘at all levels’,<sup>116</sup> ie. at the local, sub-regional, regional and global scales.<sup>117</sup> This is particularly significant because although international bodies tend to seek global, universal, knowledge, which is generally associated with scientific universality and neutrality,<sup>118</sup> IPBES moved beyond this to incorporate a multi-scale knowledge base. As a result, the work programme of

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<sup>108</sup> Turnhout *et al*, supra note 106, p. 67.

<sup>109</sup> Sheila Jasanoff, “A New Climate for Society”, 27(2-3) *Theory, Culture & Society* (2010), pp. 233-253, arguing that the IPCC has detached knowledge from meaning.

<sup>110</sup> This is in line with the perspective taken by the MA that dealt explicitly with the issue of scale and how it is related to decision-making across institutional levels. For a detailed analysis, see Silke Beck, Alejandro Esguerra, Christoph Goerg, “The Co-production of Scale and Power: The Case of the Millennium Ecosystem Assessment and the Intergovernmental Platform on Biodiversity and Ecosystem Services”, *Journal of Environmental Policy & Planning* (2014) pp. 1-16, at 9-10.

<sup>111</sup> For a comparison between scientific knowledge relative to climate and biodiversity, and implications for SPIs, see Table 1 in Brooks, supra note 104, at 543.

<sup>112</sup> *Ibid.*, at 545.

<sup>113</sup> Sandra Díaz *et al*, supra note **Erreur ! Signet non défini.**

<sup>114</sup> “Busan Outcome”, supra note 18, para 7(g).

<sup>115</sup> Decision IPBES-2/5, “Work programme”, supra note 7, para 9.

<sup>116</sup> UNEP/IPBES/2/4/Rev.1, supra note **Erreur ! Signet non défini.**, para 8, referring to ‘users at all levels’.

<sup>117</sup> “Conceptual framework”, supra note 23, para 25.

<sup>118</sup> Sheila Jasanoff (ed.), *States of Knowledge: The Co-production of Science and Social Order* (2004), in particular chapter 2.

IPBES plans to produce regional and sub-regional assessments<sup>119</sup> in addition to global ones.<sup>120</sup> Contrary to the IPCC that derives the details from the broader picture, IPBES has the intention to aggregate the smaller-scale studies into global ones.<sup>121</sup> In addition, it is as much concerned with producing assessments of current knowledge as building capacities on a local scale to address context-specific needs.<sup>122</sup>

#### **4.3 Conclusion**

To summarise, the dual dimension, temporal and spatial, of scientific knowledge embraced by IPBES can be read as implementing the rationales developed at Rio. Its recognition of the anticipatory role of scientific knowledge implements the norm of inter-generational equity adopted in the Rio Declaration that calls for a long-term perspective to environmental issues.<sup>123</sup> Similarly, its concern for policies at different levels of governance are in line with the broader Rio legal context that recognised the importance of the ecosystemic approach<sup>124</sup> and called for conceptualising the environment beyond fixed, political, boundaries. Indeed, IPBES does not envisage biodiversity purely as a matter for the central governmental authorities but from a multi-scale perspective, integrating different levels of governance.<sup>125</sup> As a result, and following Rio's acknowledgement of the importance of local actors in the context of environmental governance,<sup>126</sup> IPBES strives to include a multitude of actors operating at different levels of governance, as is presented in the next section.

### **5. IPBES, an example of a 'global partnership'**

Environmental policies are designed in an optimal way when policy-makers are given relevant and up-to-date scientific information. Scientific certainty does not only foster action

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<sup>119</sup> Decision IPBES-2/5, "Work programme", supra note 7, objective 2(b). See also IPBES/4/INF/9, "Guide on production and integration of assessments from and across all scales", in particular Chapter 2 on IPBES assessments across scales (2016).

<sup>120</sup> Decision IPBES-2/5, "Work programme", supra note 7, objective 2(c).

<sup>121</sup> RJ Scholes, B Reyers, R Biggs, MJ Spierenburg and A Duriappah, "Multi-scale and Cross-scale Assessments of Social-ecological Systems and their Ecosystem Services", 5 *Current Opinion on Environmental Sustainability* (2013) pp. 16-25, at 17.

<sup>122</sup> Decision IPBES-2/5, "Work programme", supra note 7, objective 1(a) and (b).

<sup>123</sup> Ibid., Principle 3.

<sup>124</sup> Ibid., Principle 7 reading as follows: 'States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem'.

<sup>125</sup> For an explanation of the multi- and cross-scale perspectives, see table 1, in Scholes *et al*, supra note 121, at 20.

<sup>126</sup> See in particular Rio Declaration, supra note 10, Principle 22 on the role of 'indigenous people and their communities and other local communities'.

on a national scale but also facilitates co-operative efforts at the international level.<sup>127</sup> In this respect, the Rio Declaration called for a new type of co-operation taking the form of a ‘global partnership’.<sup>128</sup> Despite being very short, the Preamble makes the establishment of a ‘new and equitable global partnership through the creation of new levels of co-operation among States, key sectors of societies and people’ one of its key messages. This aspiration then finds a dual expression in the declaration itself, in the form of Principle 7 which calls on States to co-operate in ‘a spirit of global partnership’ while acknowledging the concept of common but differentiated responsibilities and of Principle 27 that requires States to co-operate in a ‘spirit of partnership’ in the implementation and development of the law of sustainable development.

Enhanced collaboration is certainly needed to design a sustainable future: sustainable development is a concept that seeks to balance different interests, and thereby the inclusion of a diversity of participants, representing different types of knowledge and using knowledge differently, is central. The objective of building a new global partnership to solve environmental issues remains admittedly vague. Some commentators have argued that this global partnership could find its expression in the creation of institutions which are given the power to act as trustees for the protection of the environment.<sup>129</sup> Another, less ambitious, interpretation, would be to see the global partnership expressed in novel regimes that facilitate enhanced co-operation, in terms of the intensity of the collaborative process and of the diversity of the ‘participants’<sup>130</sup> involved. The section applies this understanding of a global partnership to the case of IPBES.

To start with, however, it should be noted that the main actor in this global partnership remains the State: the Platform is an inter-governmental organisation that does not grant membership to non-governmental actors. Although some stakeholders active in the field of biodiversity expected a more formal involvement in the Platform,<sup>131</sup> the sovereign State remains at the heart of the decision-making process within the Platform.<sup>132</sup> This is not surprising given the centrality of the principle of sovereignty over natural resources in the

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<sup>127</sup> Timothy Meyer, “Epistemic Institutions and Epistemic Cooperation in International Environmental Governance”, 2(1) *Transnational Environmental Law* (2013) pp. 15-44, at 16, arguing that international environmental cooperation is often ‘held hostage to uncertainty about the severity of environmental problems’.

<sup>128</sup> Rio Declaration, *supra* note 10, Principle 7.

<sup>129</sup> Peter H. Sand, “Principle 27: Cooperation in a Spirit of Global Partnership”, in Jorge E. Viñuales (ed.), *The Rio Declaration on Environment and Development* (2015) pp. 617-632, at 628-630, giving *inter alia* the example of the World Heritage Committee.

<sup>130</sup> Roselyn Higgins, *Problems and Process: International Law and How We Use It* (1994) pp. 49-50.

<sup>131</sup> Vadrot, *supra* note 11, p. 227.

<sup>132</sup> *Idem*. From a realist perspective, this can be interpreted as a strategic decision of States to better control science: see, presenting this perspective in relation to the IPCC, Beck, *supra* note **Erreur ! Signet non défini.**, at 289-290.

context of biodiversity protection.<sup>133</sup> Moreover, the choice was driven by the assumption that if governments could claim ownership of the end products of the Platform, its work would have a stronger impact on decision making processes.<sup>134</sup> Nevertheless, the prevalence of States within the Platform is somewhat lessened by a core component of the IPBES work programme that seeks to engage with stakeholders and institutionalise partnerships.<sup>135</sup> These partnerships are important for two reasons. Firstly, because IPBES operates in a pre-existing institutional framework, there are multiple entities, including scientific communities, NGOs, and representatives of local and indigenous communities that all play a fundamental role in the creation and transmission of knowledge. Compared to the IPCC, this reliance on the international legal framework is a particularity of IPBES. Whereas the IPCC was established before the adoption of the UNFCCC,<sup>136</sup> and facilitated the drafting of the convention, IPBES has been created in an international legal environment composed of multiple biodiversity-related conventions.<sup>137</sup> This singularity means that IPBES has to build a network of different institutions, of different status and form, that can find relevance in the work of the Platform. Secondly, IPBES seeks to ‘build knowledge through partnerships’<sup>138</sup> on the premise that the SPI can only effectively function through the construction of partnerships. A lack of dialogue and collaboration indeed impacts the production of knowledge, and its relevance to decision-makers<sup>139</sup>: IPBES thus aims to build links between different entities to favour the circulation of knowledge.

One of the core elements of the work of the Platform as identified in the Busan Outcome is to foster collaboration with ‘existing initiatives on biodiversity and ecosystem services, including multilateral environmental agreements, United Nations bodies and networks of scientists and knowledge holders’.<sup>140</sup> As a result, a number of what are called ‘strategic partnerships’ – the term ‘partnership’ highlighting a lexical continuity with the Rio Declaration – have been designed, or are in the process of being set up, between IPBES and

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<sup>133</sup> CBD, *supra* note 31, Article 3.

<sup>134</sup> On previous global biodiversity assessments held outside of an intergovernmental forum and their limited impact on policy, see Philippe Le Pestre and Daniel Compagnon, “IPBES and Governance of the International Biodiversity Regime Complex”, in Hrabanski and Pesche, *supra* note 11, pp. 18-41.

<sup>135</sup> Decision IPBES-2/5, Work programme, *supra* note 7, deliverable 4(d) “Communications, stakeholder engagement and strategic partnerships”.

<sup>136</sup> UNGA Res 43/53 “Protection of global climate for present and future generations of mankind” (1988), para 5.

<sup>137</sup> On this ‘regime complex’, see Philippe Le Pestre and Daniel Compagnon, “IPBES and Governance of the International Biodiversity Regime Complex”, in Hrabanski and Pesche, *supra* note 11, pp. 18-41.

<sup>138</sup> IPBES/3/18, “Report of the third session of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services” (2015), Annex II, para 12.

<sup>139</sup> “Conceptual framework”, *supra* note 23, para 32: the IPBES aims to fill knowledge gaps by ‘working with *partners* to prioritize and fill these gaps’ (emphasis added).

<sup>140</sup> “Busan Outcome”, *supra* note 18, para 7(a).

these three types of entities: United Nations entities (5.1); Multilateral Environmental Agreements (5.2); and other ‘stakeholders’ (5.3).

### ***5.1. Partnerships with United Nations entities***

The partnerships drawn with several UN entities are constitutive of the Platform: as an inter-governmental body that is under the auspices of four UN entities – United Nations Environment Programme (UNEP), United Nations Development Programme (UNDP), Food and Agriculture Organization of the United Nations (FAO) and United Nations Educational, Scientific and Cultural Organization (UNESCO) – IPBES would not be able to function without this partnership.

UNEP administers the Platform, and the four bodies contribute to the functioning of the Secretariat. It is noticeable that the four entities do not share the same legal status in the UN system: UNEP and UNDP are programmes under the umbrella of the United Nations General Assembly while the FAO and UNESCO are specialised agencies of the UN. This difference in status between the collaborating bodies is not uncommon: the IPCC is itself governed by a memorandum of understanding between the UNEP and the WMO, respectively a programme and specialised agency.<sup>141</sup> What is more unusual, however, is that whereas the IPCC was created by the two bodies,<sup>142</sup> IPBES was created independently from any international entity, and the modalities for the administration of its secretariat were only finalised at its first Plenary.

A brief overview of how this institutional arrangement was decided highlights a willingness to involve a multiplicity of entities in the administration of the Platform.<sup>143</sup> At the Busan meeting, a note by the secretariat of the plenary suggested four options to consider for the administration of the secretariat<sup>144</sup>: it would be hosted by a) one or more existing intergovernmental organisations (IO) within the UN; b) one or more IO outside of the UN system, with or without the support IOs inside the system; c) an existing IO whose secretariat is hosted by another organisation; or d) one or more NGO, together with one or more IO. The

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<sup>141</sup> “1989 Memorandum of Understanding between the United Nations Environment Programme and the World Meteorological Organisation on the Intergovernmental Panel on Climate Change”. No reference. In force 8 May 1989; and “Memorandum of Agreement FP/4102-89-01-2001”. Available online: <http://www.ipcc.ch/organization/organization.shtml> (last accessed 10 August 2016).

<sup>142</sup> World Meteorological Congress, Resolution 9 (Cg-X) in conjunction with UNEP Governing Council, Resolution GC 14/20.

<sup>143</sup> UNEP/IPBES/3/INF/4/Add.1, “Options and criteria for selecting the secretariat: executive summary. Note by the secretariat” (2010), para 9, which reads: ‘it is clear that the new platform will benefit from being associated with many stakeholders in its activities’.

<sup>144</sup> Ibid., para 4-5.



note identified a great variety of potential host institutions, including UNEP, UNDP, FAO and UNESCO, but also the biodiversity-related conventions, the International Union for Conservation of Nature, the United Nations University, and several international academic organisations and programmes.<sup>145</sup> The Busan Outcome however followed the arguably most conservative option and decided that the Platform would be administered by ‘one or more existing UN organisations, agencies, funds or programmes’.<sup>146</sup> On that basis, two options were subsequently discussed in the first session of the Plenary meeting to determine modalities and institutional arrangements for IPBES held in Nairobi: a) a single central secretariat operating from a single location or b) a distributed secretariat dealing with administrative functions at both the central and regional levels.<sup>147</sup>

At the invitation of the Plenary,<sup>148</sup> UNEP, UNESCO, FAO and UNDP put forward a joint proposal in the second session in Panama to administer together the Platform. It highlighted the expertise of the four organisations in the field of biodiversity, their history of collaboration in recent international initiatives related to biodiversity and in the creation of SPIs.<sup>149</sup> At the end of the Plenary in Panama, there was overwhelming support for creating a secretariat operating from a single location (Bonn<sup>150</sup>).<sup>151</sup> The Panama resolution requested the secretariat of UNEP to facilitate the Platform until the secretariat of the Platform is established, with a view to its being administered by one or more of the following: UNEP, UNESCO, FAO and UNDP.<sup>152</sup>

The first Plenary of IPBES clarified the institutional design of its Secretariat and opted for a hybrid solution. In decision 1/4, the Plenary asked UNEP to administer the Platform’s secretariat,<sup>153</sup> putting it in charge of providing administrative arrangements for the secretariat, including in relation to recruitment.<sup>154</sup> It also requested UNEP, UNESCO, FAO and UNDP to establish an ‘institutional link with the Platform through a collaborative partnership

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<sup>145</sup> Ibid., para 9.

<sup>146</sup> “Busan Outcome”, supra note 18, para 6(f).

<sup>147</sup> UNEP/IPBES.MI/1/8, “Report of the first session of the plenary meeting to determine modalities and institutional arrangements for an intergovernmental science policy platform on biodiversity and ecosystem services” (2011), Annex II, para 22.

<sup>148</sup> As recommended in the “Busan Outcome”, supra note 18, para 10.

<sup>149</sup> IPBES/2/INF/3, “Supporting information regarding United Nations collaborative partnership arrangements with the Intergovernmental Science-Policy Platform for Biodiversity and Ecosystem Services. Note by the secretariat” (2013), para 2-3.

<sup>150</sup> “Panama resolution”, supra note 20, para 3(c).

<sup>151</sup> “Panama resolution”, supra note 20, Appendix I, “Functions, operating principles and institutional arrangements of the Platform”, para 21.

<sup>152</sup> Ibid., para 3(b).

<sup>153</sup> Decision IPBES/1/4, “IPBES administrative and institutional arrangements”, para 3.

<sup>154</sup> It should however be noted that although UNEP takes the lead, decisions are nevertheless taken in coordination with the three other organisations. See Decision IPBES/1/4, paras 5, 7, 8 and 10.

arrangement for the work of IPBES and its secretariat',<sup>155</sup> which was eventually signed in 2014.<sup>156</sup> It gives the four institutions the following shared roles: i) coordinating relevant activities and co-operating in specific areas; ii) dedicating capacity and secondments to the secretariat of the Platform; iii) providing technical and programmatic support; iv) undertaking joint fundraising; and v) supporting the communications activities of the Platform.<sup>157</sup>

The choice to involve only one type of stakeholder – UN entities – and to give the responsibility of the Platform's Secretariat to only one body – UNEP – is undeniably restrictive compared to the options that were originally considered and is not necessarily representative of a 'global partnership'. It is a pragmatic choice that is justified on the basis of the heavy involvement of UNEP in the work undertaken towards the creation of the Platform. In addition, the decision to give the administration of the Platform solely to one body facilitates the identification of the responsible entity and avoids administrative complexities. At the same time, the collaborative partnership set up between the four institutions opens up the co-operative process, and ensures that the different experiences of the institutions evolving in the fragmented world of biodiversity governance are brought together to best guide and implement the work programme of the Platform.

## **5.2. Collaboration with MEAs**

The knowledge assembled by IPBES is directed towards decision-making processes at the national and also multilateral level. It is expected that the provision of knowledge to the biodiversity-related conventions will reduce the scientific uncertainty which often acts as an obstacle to multilateral coordinated action.<sup>158</sup> The Busan Outcome made clear that if the Platform was designed to focus on 'government needs', these included their needs as conveyed by biodiversity-related MEAs.<sup>159</sup> Although it was first envisaged the Platform might only work with, and for, the CBD<sup>160</sup> – hence reproducing the IPCC relationship with the UNFCCC – it was eventually decided that IPBES would work with a multiplicity of

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<sup>155</sup> Ibid., para 2.

<sup>156</sup> Decision IPBES-2/8, "Collaborative partnership arrangement to establish an institutional link between the Plenary and the United Nations Environment Programme, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization of the United Nations and the United Nations Development Programme"; IPBES/3/INF/14, "Progress report on the United Nations collaborative partnership arrangement for the work of the Platform and its secretariat. Note by the secretariat" (2014), para 2.

<sup>157</sup> Decision IPBES-2/8, supra note 156, Preamble.

<sup>158</sup> Steinar Andresen, *Science and Politics in International Environmental Regimes* (Manchester University Press) p. 30.

<sup>159</sup> "Busan Outcome", supra note 18, para 6(a).

<sup>160</sup> UNEP/IPBES/1/2, supra note 98, para 35.

biodiversity-related MEAs. The following section describes the consequences of these ‘strategic partnerships’ from the perspective of IPBES (5.2.1) and MEAs (5.2.2).

### 5.2.1. Strategic partnerships with MEAs

The Busan Outcome provided that the Platform would collaborate with ‘existing initiatives on biodiversity and ecosystem services, including multilateral environmental agreements [...] to fill gaps and build upon their work, while avoiding duplication’.<sup>161</sup> The MEAs with which IPBES co-operates are the six biodiversity-related conventions and the desertification convention. The six conventions<sup>162</sup> form a ‘consortium’ of MEAs that call themselves the ‘biodiversity conventions’ and often speak as one voice.<sup>163</sup> They are: the CBD, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),<sup>164</sup> the Convention on the Conservation of Migratory Species of Wild Animals (CMS Convention),<sup>165</sup> the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA),<sup>166</sup> the Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention),<sup>167</sup> and the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention).<sup>168</sup> In addition, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Desertification Convention) also takes part in the work of IPBES.<sup>169</sup> The Desertification Convention is relevant in the IPBES context given the close link between desertification and biodiversity, as recognised by science<sup>170</sup> and in law.<sup>171</sup> It is not however construed as a biodiversity convention per se: not being part of the Biodiversity Liaison Group, established between the heads of the secretariats

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<sup>161</sup> “Busan Outcome”, supra note 18, para 7(a).

<sup>162</sup> It is interesting to note that the International Plant Protection Convention (1952) is also a biodiversity convention, but, is less involved in the process: as result, references are often made to six, instead of seven, biodiversity conventions.

<sup>163</sup> See for instance, UNEP/IPBES.MI/2/INF/16, “Joint statement from the fifth meeting of the Chairs of the Scientific Advisory Bodies of Biodiversity-related Conventions” (2012, ahead of the Panama Plenary); “Joint Statement of the Six biodiversity-related Conventions” on the occasion of the First session of the IPBES Plenary (2013) on file with the author (“2013 Joint Statement”)

<sup>164</sup> CITES, supra note 70.

<sup>165</sup> CMS, supra note 70.

<sup>166</sup> ITPGRFA, supra note 71.

<sup>167</sup> Ramsar Convention, supra note 71.

<sup>168</sup> World Heritage Convention, supra note 70.

<sup>169</sup> Desertification Convention, supra note 72.

<sup>170</sup> Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Desertification Synthesis* (2010).

<sup>171</sup> Desertification Convention, supra note 72, Article 4(j), mentioning that national action programmes should take into account conservation and sustainable use of biodiversity in accordance with the provisions of the CBD.

of the biodiversity-related conventions to enhance cooperation and facilitate synergies,<sup>172</sup> it operates in a slightly different sphere as the other MEAs involved in the work of IPBES.

The willingness of the Platform to engage their MEAs has been translated in its institutional arrangements. Although a formal policy for the admission of observers has yet to be adopted,<sup>173</sup> the MEA secretariats are considered *de facto* observers of the Platform.<sup>174</sup> The chairs of the scientific subsidiary bodies can also sit as observers in the Multidisciplinary Expert Panel that oversees the scientific functions of IPBES.<sup>175</sup> And although MEAs are not members of the Platform *stricto sensu* (like States), they can put direct requests to IPBES pursuant to Decision 1/3 of the Plenary which provided that ‘[g]overnments *and multilateral environmental agreements* related to biodiversity and ecosystem services can send requests to the Platform on scientific and technical matters that require the Platform’s attention and action’.<sup>176</sup> MEAs took this opportunity to put requests to IPBES in relation to the work programme for 2014-2018<sup>177</sup>: the CBD has been particularly active, its COP putting five requests to IPBES, including preparing a global assessment on biodiversity and ecosystem services, contributing to the preparation of the next Global Biodiversity Outlook and achieving the Aichi Biodiversity Targets.<sup>178</sup> Similarly, CITES,<sup>179</sup> the CMS<sup>180</sup> and the Desertification Convention<sup>181</sup> also put requests to IPBES.

The co-operation between IPBES and the MEAs is also formalised in ‘strategic partnerships’.<sup>182</sup> Although the observer status granted to MEAs and the possibility given to them to put requests to IPBES could be sufficient engagement, it has been acknowledged that strategic partnerships might be useful ‘in helping to clarify and codify what is expected of the

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<sup>172</sup> Members of the Biodiversity Liaison Group are the CBD, the CMS, CITES, the International Plant Protection Convention, ITPGRFA, the Ramsar Convention and the World Heritage Convention. For more on the Biodiversity Liaison Group, see: <https://www.cbd.int/blg/> (last accessed 1 November 2016).

<sup>173</sup> The draft policy and procedures for the admission of observers fails to achieve consensus, and will be considered again at the 5<sup>th</sup> Plenary. See IPBES/4/19 “Report of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on the work of its fourth session” (2016), para 103-105.

<sup>174</sup> In application of the “Busan Outcome”, *supra* note 18, para 6(g): ‘Intergovernmental organizations and other relevant stakeholders should participate in the plenary as observers, in accordance with the rules of procedure established by the plenary’. See also, IPBES-3/13, Annex, “Draft policy and procedures for the admission of observers”.

<sup>175</sup> Decision IPBES-2/1, “Amendments to the rules of procedure for the Plenary with regard to rules governing the Multidisciplinary Expert Panel” (2013), Rule 25(3).

<sup>176</sup> Decision IPBES/1/3, para 2, *emphasis added*. See also “Busan Outcome”, *supra* note 18, para 6(a).

<sup>177</sup> IPBES/2/INF/9, “Supporting documentation on the prioritization of requests, inputs and suggestions put to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services” (2013).

<sup>178</sup> *Ibid.*, pp. 23-25.

<sup>179</sup> *Ibid.*, pp. 26.

<sup>180</sup> *Ibid.*, pp. 27-29.

<sup>181</sup> *Ibid.*, p. 29.

<sup>182</sup> As suggested by the Plenary in Decision IPBES/1/2.

relationship’.<sup>183</sup> A first memorandum of co-operation was signed between the Secretariat of the CBD and the Secretariat of IPBES in October 2014.<sup>184</sup> Given the centrality of the CBD in the field of biodiversity, it comes as no surprise that even if the MEAs involved in IPBES are treated as equal partners, the CBD takes a leading role and that, as a result, the first strategic partnership established with an MEA was with the CBD. Its purpose is to encourage effective co-operation for the purpose of ‘promoting synergy, avoiding overlaps and unnecessary duplication’.<sup>185</sup> Activities envisaged in the memorandum comprise *inter alia* a regular exchange of information – including with a view to jointly preparing draft documents<sup>186</sup> – and the undertaking of joint activities.<sup>187</sup> Other memoranda of a similar content were then signed in 2017 with three other multilateral environmental agreements – the CMS,<sup>188</sup> CITES<sup>189</sup> and the Ramsar Convention.<sup>190</sup>

#### 5.2.2. Influence of IPBES on MEAs

One of the objectives of IPBES is to facilitate the implementation of the obligations found in biodiversity-related conventions. As a result, the creation of the Platform has had, and will have, an undeniable impact on the MEAs. The conventions have welcomed the creation of the Platform, expressing the will to form a ‘strong relationship’ between them and the Platform,<sup>191</sup> and to contribute to, and benefit from, IPBES.<sup>192</sup> In addition to a collective endorsement of IPBES, each of them has welcomed the creation of IPBES in a COP

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<sup>183</sup> IPBES/2/14, “Guidance on the development of strategic partnerships. Note by the secretariat” (2013), para 11(b).

<sup>184</sup> “Memorandum of cooperation signed between the Secretariat of the CBD and the Secretariat of IPBES”, October 2014. Available online: <https://www.cbd.int/agreements/> (last accessed 10 August 2016).

<sup>185</sup> Ibid., Article 1.

<sup>186</sup> Ibid., Article 2.

<sup>187</sup> Ibid., Article 3.

<sup>188</sup> “Memorandum of Cooperation between the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals and the Secretariat of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services”, February 2017 (on file with the author).

<sup>189</sup> “Memorandum of Cooperation between the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna Flora and the Secretariat of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services”, March 2017. Available online: [https://cites.org/sites/default/files/eng/disc/coop/MoC\\_CITES-IPBES\\_signed.pdf](https://cites.org/sites/default/files/eng/disc/coop/MoC_CITES-IPBES_signed.pdf) (last accessed 29 March 2017)

<sup>190</sup> “Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) and Ramsar Convention sign Memorandum of Cooperation”, March 2017. Available online: <http://www.ramsar.org/news/intergovernmental-science-policy-platform-on-biodiversity-and-ecosystem-services-ipbes-and> (last accessed 29 March 2017).

<sup>191</sup> “2013 Joint statement”, supra note 163, p. 2.

<sup>192</sup> Ibid: ‘The six biodiversity-related conventions have an important role in setting the global agenda on biodiversity and ecosystem services, and as we have emphasized throughout the process of establishing IPBES, we would like to see a strong relationship between the Platform and the biodiversity-related conventions’.

decision,<sup>193</sup> acknowledging the importance of the new mechanism in the institutional landscape dealing with biodiversity-related issues.

The creation of the Platform raised the question of how the scientific subsidiary bodies of the MEAs would interact with IPBES: as knowledge holders, and users, they can play a fundamental role in the IPBES-MEA relationship. Although it remains to be seen how the links will develop, at present, the scientific bodies see their role as facilitating the identification of issues which might take the form of requests put to IPBES,<sup>194</sup> that they then suggest to the COP for official endorsement. The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) of the CBD tried to push its involvement further by suggesting to the COP that it should be given the authority to transmit requests directly to Platform in relation to matters than might request urgent attention.<sup>195</sup> The COP however declined to give the SBSTTA direct access to IPBES for the purpose of formulating requests on its behalf and only gave it the power to exchange information with the Platform.<sup>196</sup>

In turn, it also remains to be seen how the MEAs, including their scientific body, use the knowledge provided. The COP of the CBD, which met a few months after the adoption of the Platform's first outputs, has been very appreciative of its work. It welcomed the Platform's methodological assessment on scenarios and models, recognising its relevance in the context of the preparation of the fifth edition of its flagship publication, the Global Biodiversity Outlook<sup>197</sup>. It also took note of the Platform's thematic assessment on pollinators and encouraged Parties to take a multiplicity of policies, which the decision details, in response to the Platform's findings.<sup>198</sup> Overall, how the CBD and the other biodiversity conventions react to – and use – the first products of IPBES will be crucial to the future of the

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<sup>193</sup> CBD, Resolution X/11 “Science-policy interface on biodiversity, ecosystem services and human well-being and consideration of the outcome of the intergovernmental meetings” (2010); CMS, UNEP/CMS/Resolution 10.8, “Cooperation between the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) and CMS” (2011); Ramsar Convention, Resolution XI.6 “Partnerships and synergies with Multilateral Environmental Agreements and other institutions” (2012), para 17, 29 and 30; ITPGRFA, Resolution 5/2013 “Relationship with the Convention on Biological Diversity” (2013), para 5; World Heritage Convention, Decision 37 COM 5A (2013), para 7; CITES, Decisions 13.16 to 16.16 (2013).

<sup>194</sup> UNEP/IPBES.MI/2/INF/16, *supra* note 163, p. 2.

<sup>195</sup> CBD SBSTTA Recommendation XVIII/9 (2014), reading as follows: ‘Also decides that the Subsidiary Body on Scientific, Technical and Technological Advice may formulate requests to the Platform, where the subject is within the mandate given to it by the Conference of the Parties, and the matter requires urgent attention by the Subsidiary Body on Scientific, Technical and Technological Advice, which would be *significantly impaired by the delay needed for transmission to the Conference of the Parties*. In such cases, the Subsidiary Body on Scientific, Technical and Technological Advice may transmit these requests through the Executive Secretary to the Secretariat of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, in accordance with the procedures established by the Platform’ (emphasis added).

<sup>196</sup> CBD, Decision XII/25 (2014), para 2.

<sup>197</sup> CBD, Decision XIII/29 (2016), para 4-5.

mechanism and will provide important feedback on how the Platform can best meet the needs of the scientific and policy communities.

It can be expected that by producing a unique discourse, the Platform will harmonise and mainstream the production of knowledge. This could have a harmonising effect on the conventions themselves: as they get access to the same information, it will encourage them to engage in a more effective dialogue to explore synergies and avoid duplication.<sup>199</sup> This effect was made explicit in resolution 2/17 adopted by the UN Environment Assembly at its second session in 2016.<sup>200</sup> The resolution *inter alia* requested the UNEP Executive Director to facilitate the ‘interoperability of data, information, knowledge and tools’ between the conventions secretariats and IPBES, and ‘enhance sharing of information’ among the conventions, IPBES, and UNEP,<sup>201</sup> while inviting the governing bodies of the conventions, other relevant UN bodies and IPBES to ‘further strengthen their cooperation’.<sup>202</sup> In other words, IPBES could bring cohesion and coherence in the fragmented biodiversity regime.

The framing of the discourse of IPBES within the rationale of sustainable development could have a substantial impact on the conventions, in particular for the four which were adopted before 1992, that is to say before the acceptance of the sustainable development concept.<sup>203</sup> The precise consequences of integrating pre-sustainable development conventions in an SPI that operates upon the normative logics of sustainable development remain to be seen. It can however be expected that the provision of a knowledge framed in the context of the sustainable development objective will contribute to the interpretation of the treaties within this very framework, facilitating an evolutionary interpretation of pre-Rio treaties in light of current international environmental norms.<sup>204</sup>

### 5.3. Stakeholder engagement

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<sup>199</sup> The work of the Platform will support the work of the UNEP on improving the effectiveness of and cooperation among biodiversity-related conventions and exploring opportunities for further synergies. See for instance, UNEP Governing Council Decision SS XII/3, para 1, recognising the importance of enhancing synergies among the biodiversity-related conventions; and, more generally, UNGA Res. 66/228 (2012), *supra* note 3, para 89 on the contribution of MEAs to sustainable development and encouraging them to enhance co-operation among them.

<sup>200</sup> UNEA Resolution 2/17 “Enhancing the work of the United Nations Environment Programme in facilitating cooperation, collaboration and synergies among biodiversity-related conventions” (2016).

<sup>201</sup> *Ibid*, para 4.

<sup>202</sup> *Ibid*, para 7.

<sup>203</sup> CBD, *supra* note 31 (1992) and ITPGRFA, *supra* note 71 (2004).

<sup>204</sup> Virginie Barral, “Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm”, 23(2) *European Journal of International Law* (2012) pp. 377-400, at 394-395.

The establishment of strategic partnerships with the UN system and MEAs have been identified as a priority for the Platform.<sup>205</sup> In addition, it is also reaching out to other entities, known as ‘stakeholders’, identified, in rather utilitarian terms<sup>206</sup>, as knowledge contributors (eg. scientists, indigenous communities) and end users (eg. policy-makers, NGOs).<sup>207</sup> From the outset, it should be noted that the term ‘stakeholder’ used in the context of IPBES brings together entities of a different nature, including States, international organisations, and MEAs, but also non-governmental organisations, the private sector and representatives of indigenous and local communities. It encompasses entities operating at different levels (local, regional, global), in various disciplines (natural, social and economic sciences), from multiple sectors (eg. industry, energy, food),<sup>208</sup> and able to share different types of knowledge (traditional, local and indigenous).

The willingness to engage with different stakeholders was formalised in the form of a ‘strategy relative to stakeholder engagement for supporting the implementation of the work programme’ adopted by the Plenary.<sup>209</sup> The objective of the strategy is described as three-fold: i) to mobilise stakeholders that can act as contributors; ii) to facilitate the use of the Platform’s products; and iii) to facilitate the participation of observers at the Plenary as well as invite comments on documents to be submitted to the Plenary.<sup>210</sup> This stakeholder engagement strategy, an institutional innovation not found in other SPIs,<sup>211</sup> is in line with the collaborative and inclusive approach taken during the negotiations leading to the creation of the Platform<sup>212</sup> and with its conceptual framework that aims to embody the plurality of knowledge, representing actors active at various levels of governance and embracing different conceptualisations of biodiversity. Indeed, the strategy is currently in its initial phase: it is seeking to identify the stakeholders and analyse their needs and is starting to engage with

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<sup>205</sup> IPBES/3/18, supra note 138, Annex on strategic partnerships, para 15.

<sup>206</sup> Marie Hrabanski, Mohamed Oubenal and Denis Pesche, “Building Process, Effectiveness, and Limits of an IPBES Stakeholder Group”, in Hrabanski and Pesche, supra note 11, pp. 154-172, at 157.

<sup>207</sup> Decision IPBES-3/4, “Stakeholder strategy”, Annex II, para 9.

<sup>208</sup> IPBES/3/16, “Revised Draft Stakeholder Strategy: Note by the Secretariat”, 2014, Annex, para 2. See also Marie Hrabanski, Mohamed Oubenal and Denis Pesche, “Building Process, Effectiveness, and Limits of an IPBES Stakeholder Group”, in Hrabanski and Pesche, supra note 11, pp. 154-172, at 164, dividing the non-state entities that attended IPBES meetings into seven categories: university/research (88 organisations), environmental NGOs (33), development NGOs (17), indigenous people (12), business (8), others (7), platform (5).

<sup>209</sup> Ibid., Annex II, Appendix.

<sup>210</sup> Ibid., Annex II, para 11.

<sup>211</sup> Marie Hrabanski, Mohamed Oubenal and Denis Pesche, “Building Process, Effectiveness, and Limits of an IPBES Stakeholder Group”, in Hrabanski and Pesche, supra note 11, pp. 154-172, at 154.

<sup>212</sup> Non-state actors were integrated in the Platform from the outset: see the three ad-hoc intergovernmental and *multi-stakeholders* meetings held in preparation to the creation of IPBES described in section 2.



them through a multiplicity of outreach activities, inter alia by continuing to hold ‘stakeholder days’ before each plenary.<sup>213</sup>

It is too early to assess whether the strategy relative to stakeholder engagement fully contributes to the inclusiveness and transparency of the process, but it is certain that stakeholder engagement is considered essential to build the credibility of the Platform’s work. As with the MEAs, the Plenary does not merely seek to engage with these stakeholders but also wishes to institutionalise the relationship in the form of a formal partnership. A memorandum of co-operation between the Platform and a self-organised open-ended network of stakeholders is currently being finalised.<sup>214</sup> The objective is that the open-ended network will provide support to the secretariat for the implementation of the programme of work 2014-2018, including the activities defined in the implementation plan of the stakeholder engagement strategy.<sup>215</sup> In addition, other strategic partnerships with a variety of stakeholders are envisaged.<sup>216</sup> The form taken by the strategic partnerships can vary considerably – and might include exchange of letters,<sup>217</sup> memoranda of understanding,<sup>218</sup> or contracts<sup>219</sup> – but share the common objective of confirming a common understanding between the partners.<sup>220</sup> The institutionalisation of the partnership transforms what were mere stakeholders in an international process (and thus not necessarily fully integrated, or even welcome) into partners of an intergovernmental body. It depicts the Platform as a body that seeks to formalise the role of a variety of individuals, communities and institutions with a stake in conservation in a stable co-operative process.

The openness of the Platform to different actors should however be mitigated in light of the fact that the procedure granting access to observers to the plenaries has yet to be adopted.<sup>221</sup> Indeed, being identified as a stakeholder does not necessarily grant the status of

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<sup>213</sup> Decision IPBES-3/4, ‘Stakeholder strategy’, Annex II, Appendix, ‘Initial implementation plan’.

<sup>214</sup> Decision IPBES-4/4, para 3.

<sup>215</sup> IPBES/4/18, ‘Communications, stakeholder engagement and strategic partnerships (deliverable 4 (d)). Note by the secretariat’ (2015), Annex III, ‘Draft elements for a memorandum of cooperation between the Platform and the open-ended network of stakeholders’.

<sup>216</sup> In this regard, memoranda of understanding have been drafted, but not yet signed, with Future Earth, IUCN and the Inter-American Institute for Global Change Research. See IPBES/4/18, *supra* note 215, Annex II ‘Steps taken to establish strategic partnerships’.

<sup>217</sup> Decision IPBES-3/4, ‘Communications, stakeholder engagement and strategic partnership’, Annex III, ‘Guidance on the development of strategic partnerships and other collaborative arrangements’, para 11. See also, for the latest developments, IPBES/5/9, ‘Communications, stakeholder engagement and strategic partnerships (deliverable 4 (d)). Note by the secretariat’ (2016), para 27-28.

<sup>218</sup> *Idem*.

<sup>219</sup> *Ibid.*, para 14.

<sup>220</sup> *Ibid.*, para 15.

<sup>221</sup> Currently, the interim procedure for the admission of observers has been re-applied at each Plenary: IPBES/5/L.1, ‘Draft report of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on the work of its fifth session’, para 29.

observer to the plenaries. In this regard, on-going disagreements between Parties regarding the level of agreement between member States needed to admit an observer<sup>222</sup> have meant that IPBES had relied on an interim procedure regarding the admission of observers since its inception.<sup>223</sup> The inability to reach an agreement on this reveals the attempt of certain member States to control the process by strongly regulating the participation of non-state actors.<sup>224</sup>

#### **5.4. Conclusion**

The call of the Rio Preamble for new, enhanced, forms of co-operation could be seen as merely aspirational. However, it has materialised in the form of the ‘strategic partnerships’ that IPBES is building with the multiple, and diverse, stakeholders active in the field of conservation and sustainable use. The adjective ‘strategic’ – an addition to the Rio term of ‘partnerships’ – raises the following question: who benefits from strategic partnerships, or, put simply, for whom are ‘strategic partnerships’ strategic? They are strategic for the Platform that relies on them pragmatically to further the implementation of its work programme and symbolically to build an inclusive and participatory process to gain legitimacy and credibility.<sup>225</sup> They are also strategic for the stakeholders that are given the opportunity to shape the directions taken by the Platform and can ensure that the work of the Platform is relevant to their own work. However, who integrates this ‘global partnership’ is inevitably a ‘strategic’, in the sense of political, decision, and some stakeholders will inevitably be left aside, either because the Platform wants to limit their influence on the process, or because the involvement of too many stakeholders can render the process unmanageable. Even for the stakeholders that are invited to join the process, they will need to be willing to join a global governance system and have appropriate human resources and financial means to engage with global processes.<sup>226</sup>

### **6. Concluding remarks**

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<sup>222</sup> Some member States ask that the observer status be granted on the basis of consensus instead of the more common 2/3 majority usually used in MEA settings.

<sup>223</sup> IPBES/4/19, “Report of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on the work of its fourth session” (2016), para 104.

<sup>224</sup> Denis Pesche, Guillaume Futhazar and Sandrine Maljean-Dubois, “IPBES Mandate and Governance”, in Hrabanski and Pesche, *supra* note 11, pp. 78-101, at 83.

<sup>225</sup> *Ibid.*, Annex II, para 4, where stakeholder engagement is identified as ‘an important element for the [...] overall success of the Platform’.

<sup>226</sup> Denis Pesche, Guillaume Futhazar and Sandrine Maljean-Dubois, “IPBES Mandate and Governance”, in Hrabanski and Pesche, *supra* note 11, pp. 78-101, at 84, noting that stakeholders regularly highlight the lack of funding to support stakeholder engagement.

The article unpacked the epistemic logics within which IPBES operates, underlying the role of normative constructions on the design and operation of the mechanism.<sup>227</sup> The Rio Declaration, and its adoption of the concept of sustainable development, frames IPBES, in its mandate, scope and outreach activities. It gives an example of a body created to provide an answer to the implementation deficit facing international environmental law after two decades of discourses and summits on sustainable development.

This study should close on one final consequence arising from the framing of IPBES within the law of sustainable development: until now, this article has taken sustainable development as a static concept, whose core rationale is enshrined in the Rio Declaration. However, the law of sustainable development is evolving<sup>228</sup> in ways which will inevitably impact the Platform. In particular, sustainable development is now understood in light of the concept of ‘green economy’ adopted at the Rio+20 Summit.<sup>229</sup> The extent to which this new notion leads to a reinterpretation of the concept of sustainable development remains uncertain. The green economy concept is invoked by Parties to the CBD to call for a closer dialogue with the business sector,<sup>230</sup> thereby welcoming the involvement of private actors in the international process. At the same time however, Parties also use the notion of green economy to push for economic valuation as a tool for more effective treaty implementation.<sup>231</sup> Applied in the IPBES context, this new understanding of the concept of sustainable development contributes to broadening the global partnership but also strengthens the sustainable development angle that embraces a utilitarian perspective to biodiversity to the detriment of other value systems. However, in light of these risks, a recent UNEP report called for building an ‘inclusive’ green economy.<sup>232</sup> Under this perspective, the green economy concept puts the emphasis on the need to open up the global partnership to a variety of actors but also to recognise that there are ‘multiple approaches towards environmental sustainability’, including

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<sup>227</sup> Adi Ayal, Ronen Hareuveny and Oren Perez, “Science, Politics and Transnational Regulation: Regulatory Scientific Institutions and the Dilemmas of Hybrid Authority”, 2(1) *Transnational Environmental Law* (2013), pp. 45-68, describing the ‘political-legal-epistemic’ nature of SPIs. See also Oren Perez, “The Hybrid Legal-Scientific Dynamic of Transnational Scientific Institutions”, 26(2) *European Journal of International Law* (2015) pp. 391-416, discussing the normative and epistemic authority of SPIs.

<sup>228</sup> Jorge E. Viñuales, “The Rise and Fall of Sustainable Development”, 22 *Review of European Comparative and International Environmental Law* (2013), pp. 3-13, on what he calls the ‘snake of sustainable development’.

<sup>229</sup> “The Future We Want”, UNGA Res. 66/288 (11 September 2012), section III, para 56-74. For an analysis, see Elisa Morgera and Annalisa Savaresi, “A Conceptual and Legal Perspective on the Green Economy” 22(1) *Review of European Comparative and International Environmental Law* (2013), pp. 14-28.

<sup>230</sup> K. Louw et al, “Summary of the Eleventh Meeting of the Conference of the Parties to the Convention on Biological Diversity, 22 October 2012”, 9(595) *Earth Negotiations Bulletin* (2012), at 3 and 20, cited in Morgera and Savaresi, *Ibid.*

<sup>231</sup> *Idem.*

<sup>232</sup> UNEP, *Uncovering Pathways towards an Inclusive Green Economy: A Summary for Leaders* (2015).

ones not centered on economic valuation.<sup>233</sup> Such a renewed perspective on sustainable development, highlighting the importance of an inclusive process acknowledging the diversity of approaches to nature, is to be encouraged: it will ensure that IPBES, as an institution framing scientific knowledge within the law of sustainable development, evolved with the international legal system and becomes a credible and relevant institution in the field of environmental governance.

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<sup>233</sup> Ibid., p. 25.